

ASSISTED OUTPATIENT TREATMENT FOR MENTAL ILLNESS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill creates a process for the provision of assisted outpatient treatment for an individual with mental illness.

Highlighted Provisions:

This bill:

- ▶ defines "assisted outpatient treatment";
- ▶ describes the services provided to an individual receiving assisted outpatient treatment;
- ▶ describes the process whereby an individual is court ordered to receive assisted outpatient treatment;
- ▶ requires a designated examiner to consider assisted outpatient treatment when evaluating a proposed patient for civil commitment; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

17-43-301, as last amended by Laws of Utah 2018, Chapters 68 and 407

62A-15-602, as last amended by Laws of Utah 2018, Chapter 322

62A-15-618, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8

62A-15-631, as last amended by Laws of Utah 2018, Chapter 322

62A-15-703, as last amended by Laws of Utah 2018, Chapter 322

ENACTS:

31A-22-650, Utah Code Annotated 1953

33 **62A-15-630.4**, Utah Code Annotated 1953

34 **62A-15-630.5**, Utah Code Annotated 1953

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **17-43-301** is amended to read:

38 **17-43-301. Local mental health authorities -- Responsibilities.**

39 (1) As used in this section:

40 (a) "Assisted outpatient treatment" means the same as that term is defined in Section
41 62A-15-602.

42 ~~[(a)]~~ (b) "Crisis worker" means the same as that term is defined in Section
43 62A-15-1301.

44 ~~[(b)]~~ (c) "Local mental health crisis line" means the same as that term is defined in
45 Section 63C-18-102.

46 ~~[(c)]~~ (d) "Mental health therapist" means the same as that term is defined in Section
47 58-60-102.

48 ~~[(d)]~~ (e) "Public funds" means the same as that term is defined in Section 17-43-303.

49 ~~[(e)]~~ (f) "Statewide mental health crisis line" means the same as that term is defined in
50 Section 63C-18-102.

51 (2) (a) (i) In each county operating under a county executive-council form of
52 government under Section 17-52a-203, the county legislative body is the local mental health
53 authority, provided however that any contract for plan services shall be administered by the
54 county executive.

55 (ii) In each county operating under a council-manager form of government under
56 Section 17-52a-204, the county manager is the local mental health authority.

57 (iii) In each county other than a county described in Subsection (2)(a)(i) or (ii), the
58 county legislative body is the local mental health authority.

59 (b) Within legislative appropriations and county matching funds required by this
60 section, under the direction of the division, each local mental health authority shall:

61 (i) provide mental health services to ~~[persons]~~ individuals within the county; and

62 (ii) cooperate with efforts of the Division of Substance Abuse and Mental Health to
63 promote integrated programs that address an individual's substance abuse, mental health, and

physical healthcare needs, as described in Section 62A-15-103.

(c) Within legislative appropriations and county matching funds required by this section, each local mental health authority shall cooperate with the efforts of the Department of Human Services to promote a system of care, as defined in Section 62A-1-104, for minors with or at risk for complex emotional and behavioral needs, as described in Section 62A-1-111.

(3) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to:

(i) provide mental health prevention and treatment services; or

(ii) create a united local health department that combines substance abuse treatment services, mental health services, and local health department services in accordance with Subsection (4).

(b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of mental health services.

(c) Each agreement for joint mental health services shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined mental health authorities and as the custodian of money available for the joint services; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from the money available for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined mental health authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined mental health authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined mental health authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating

counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint mental health services may provide for:

(i) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

(ii) allocation of appointments of members of the mental health advisory council between or among participating counties.

(4) A county governing body may elect to combine the local mental health authority with the local substance abuse authority created in Part 2, Local Substance Abuse Authorities, and the local health department created in Title 26A, Chapter 1, Part 1, Local Health Department Act, to create a united local health department under Section 26A-1-105.5. A local mental health authority that joins with a united local health department shall comply with this part.

(5) (a) Each local mental health authority is accountable to the department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

(b) Each local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

(6) (a) Each local mental health authority shall:

(i) review and evaluate mental health needs and services, including mental health needs and services for ~~persons~~;

(A) an individual incarcerated in a county jail or other county correctional facility; and

(B) an individual who is a resident of the county and who is court ordered to receive assisted outpatient treatment under Section 62A-15-630.5;

(ii) in accordance with Subsection (6)(b), annually prepare and submit to the division a

plan approved by the county legislative body for mental health funding and service delivery, either directly by the local mental health authority or by contract;

(iii) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(iv) appoint, directly or by contract, a full-time or part-time director for mental health programs and prescribe the director's duties;

(v) provide input and comment on new and revised rules established by the division;

(vi) establish and require contract providers to establish administrative, clinical, personnel, financial, procurement, and management policies regarding mental health services and facilities, in accordance with the rules of the division, and state and federal law;

(vii) establish mechanisms allowing for direct citizen input;

(viii) annually contract with the division to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(ix) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(x) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

(xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts, and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act; and

(xii) take and retain physical custody of minors committed to the physical custody of local mental health authorities by a judicial proceeding under Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(b) Each plan under Subsection (6)(a)(ii) shall include services for adults, youth, and children, which shall include:

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

(vi) psychosocial rehabilitation, including vocational training and skills development;

(vii) case management;

(viii) community supports, including in-home services, housing, family support services, and respite services;

(ix) consultation and education services, including case consultation, collaboration with other county service agencies, public education, and public information; and

(x) services to persons incarcerated in a county jail or other county correctional facility.

(7) (a) If a local mental health authority provides for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall:

(i) collaborate with the statewide mental health crisis line described in Section 62A-15-1302;

(ii) ensure that each individual who answers calls to the local mental health crisis line:

(A) is a mental health therapist or a crisis worker; and

(B) meets the standards of care and practice established by the Division of Substance Abuse and Mental Health, in accordance with Section 62A-15-1302; and

(iii) ensure that when necessary, based on the local mental health crisis line's capacity, calls are immediately routed to the statewide mental health crisis line to ensure that when an individual calls the local mental health crisis line, regardless of the time, date, or number of individuals trying to simultaneously access the local mental health crisis line, a mental health therapist or a crisis worker answers the call without the caller first:

(A) waiting on hold; or

(B) being screened by an individual other than a mental health therapist or crisis worker.

(b) If a local mental health authority does not provide for a local mental health crisis line under the plan for 24-hour crisis care and services described in Subsection (6)(b)(iv), the local mental health authority shall use the statewide mental health crisis line as a local crisis line resource.

(8) Before disbursing any public funds, each local mental health authority shall require that each entity that receives any public funds from a local mental health authority agrees in

188 writing that:

189 (a) the entity's financial records and other records relevant to the entity's performance
190 of the services provided to the mental health authority shall be subject to examination by:

191 (i) the division;

192 (ii) the local mental health authority director;

193 (iii) (A) the county treasurer and county or district attorney; or

194 (B) if two or more counties jointly provide mental health services under an agreement
195 under Subsection (3), the designated treasurer and the designated legal officer;

196 (iv) the county legislative body; and

197 (v) in a county with a county executive that is separate from the county legislative
198 body, the county executive;

199 (b) the county auditor may examine and audit the entity's financial and other records
200 relevant to the entity's performance of the services provided to the local mental health
201 authority; and

202 (c) the entity will comply with the provisions of Subsection (5)(b).

203 (9) A local mental health authority may receive property, grants, gifts, supplies,
204 materials, contributions, and any benefit derived therefrom, for mental health services. If those
205 gifts are conditioned upon their use for a specified service or program, they shall be so used.

206 (10) Public funds received for the provision of services pursuant to the local mental
207 health plan may not be used for any other purpose except those authorized in the contract
208 between the local mental health authority and the provider for the provision of plan services.

209 (11) A local mental health authority shall provide assisted outpatient treatment
210 services, as described in Section 62A-15-630.4, to a resident of the county who has been
211 ordered under Section 62A-15-630.5 to receive assisted outpatient treatment.

212 Section 2. Section **31A-22-650** is enacted to read:

213 **31A-22-650. Insurance coverage for assisted outpatient treatment.**

214 (1) As used in this section, "assisted outpatient treatment" means the same as that term
215 is defined in Section 62A-15-602.

216 (2) A health insurance provider may not deny an insured the benefits of the insured's
217 policy solely because the health care that the insured receives is provided under a court order
218 for assisted outpatient treatment, as provided in Section 62A-15-630.5.

Section 3. Section **62A-15-602** is amended to read:

62A-15-602. Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:

(1) "Adult" means an individual 18 years of age or older.

(2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection 62A-15-103(2)(a)(v).

(3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 62A-15-630.5.

~~[(3)]~~ (4) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.

~~[(4)]~~ (5) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.

~~[(5)]~~ (6) "Designated examiner" means:

(a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or

(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.

~~[(6)]~~ (7) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.

~~[(7)]~~ (8) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

250 ~~[(8)]~~ (9) "Harmful sexual conduct" means the following conduct upon an individual
251 without the individual's consent, including the nonconsensual circumstances described in
252 Subsections 76-5-406(1) through (12):

- 253 (a) sexual intercourse;
- 254 (b) penetration, however slight, of the genital or anal opening of the individual;
- 255 (c) any sexual act involving the genitals or anus of the actor or the individual and the
256 mouth or anus of either individual, regardless of the gender of either participant; or
- 257 (d) any sexual act causing substantial emotional injury or bodily pain.

258 ~~[(9)]~~ (10) "Institution" means a hospital or a health facility licensed under Section
259 26-21-8.

260 ~~[(10)]~~ (11) "Local substance abuse authority" means the same as that term is defined in
261 Section 62A-15-102 and described in Section 17-43-201.

262 ~~[(11)]~~ (12) "Mental health facility" means the Utah State Hospital or other facility that
263 provides mental health services under contract with the division, a local mental health
264 authority, a person that contracts with a local mental health authority, or a person that provides
265 acute inpatient psychiatric services to a patient.

266 ~~[(12)]~~ (13) "Mental health officer" means an individual who is designated by a local
267 mental health authority as qualified by training and experience in the recognition and
268 identification of mental illness, to:

- 269 (a) apply for and provide certification for a temporary commitment; or
- 270 (b) assist in the arrangement of transportation to a designated mental health facility.

271 ~~[(13)]~~ (14) "Mental illness" means:

- 272 (a) a psychiatric disorder that substantially impairs an individual's mental, emotional,
273 behavioral, or related functioning; or

274 (b) the same as that term is defined in:

- 275 (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders
276 published by the American Psychiatric Association; or
- 277 (ii) the current edition of the International Statistical Classification of Diseases and
278 Related Health Problems.

279 ~~[(14)]~~ (15) "Patient" means an individual who is:

- 280 (a) under commitment to the custody or to the treatment services of a local mental

281 health authority; or

282 (b) undergoing essential treatment and intervention.

283 ~~[(15)]~~ (16) "Physician" means an individual who is:

284 (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

285 (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical

286 Practice Act.

287 ~~[(16)]~~ (17) "Serious bodily injury" means bodily injury that involves a substantial risk

288 of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or

289 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

290 ~~[(17)]~~ (18) "Substantial danger" means that due to mental illness, an individual is at

291 serious risk of:

292 (a) suicide;

293 (b) serious bodily self-injury;

294 (c) serious bodily injury because the individual is incapable of providing the basic

295 necessities of life, including food, clothing, or shelter;

296 (d) causing or attempting to cause serious bodily injury to another individual; or

297 (e) engaging in harmful sexual conduct.

298 ~~[(18)]~~ (19) "Treatment" means psychotherapy, medication, including the administration

299 of psychotropic medication, or other medical treatments that are generally accepted medical or

300 psychosocial interventions for the purpose of restoring the patient to an optimal level of

301 functioning in the least restrictive environment.

302 Section 4. Section **62A-15-618** is amended to read:

303 **62A-15-618. Designated examiners.**

304 (1) A designated examiner, when evaluating a proposed patient for civil commitment,

305 shall consider whether:

306 (a) a proposed patient has been under a court order for assisted outpatient treatment;

307 (b) the proposed patient complied with the terms of the assisted outpatient treatment

308 order, if any; and

309 (c) whether assisted outpatient treatment is sufficient to meet the proposed patient's

310 needs.

311 (2) Designated examiners shall be allowed a reasonable fee by the county legislative

body of the county in which the proposed patient resides or is found, unless they are otherwise paid.

Section 5. Section **62A-15-630.4** is enacted to read:

62A-15-630.4. Assisted outpatient treatment services.

(1) The local mental health authority or its designee shall provide assisted outpatient treatment, which shall include:

(a) case management; and

(b) an individualized treatment plan, created with input from the proposed patient when possible.

(2) A court order for assisted outpatient treatment does not create independent authority to forcibly medicate a patient.

Section 6. Section **62A-15-630.5** is enacted to read:

62A-15-630.5. Assisted outpatient treatment proceedings.

(1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need for assisted outpatient treatment may file, in the district court in the county where the proposed patient resides or is found, a written application that includes:

(a) unless the court finds that the information is not reasonably available, the proposed patient's:

(i) name;

(ii) date of birth; and

(iii) social security number; and

(b) (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based.

(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(b) The consultation described in Subsection (2)(a):

(i) may take place at or before the hearing; and

(ii) is required if the local mental health authority appears at the hearing.

(3) If the proposed patient refuses to submit to an interview described in Subsection (2)(a) or an examination described in Subsection (8), the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient into the custody of a local mental health authority or in a temporary emergency facility, as provided in Section 62A-15-634, to be detained for the purpose of examination.

(4) Notice of commencement of proceedings for assisted outpatient treatment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall:

(a) be provided by the court to a proposed patient before, or upon, placement into the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority;

(b) be maintained at the proposed patient's place of detention, if any;

(c) be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other person whom the proposed patient or the court shall designate; and

(d) advise that a hearing may be held within the time provided by law.

(5) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(6) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention in order to complete an examination, the court shall appoint two designated examiners:

374 (a) who did not sign the assisted outpatient treatment application nor the certification
375 described in Subsection (1);

376 (b) one of whom is a licensed physician; and

377 (c) one of whom may be designated by the proposed patient or the proposed patient's
378 counsel, if that designated examiner is reasonably available.

379 (7) The court shall schedule a hearing to be held within 10 calendar days of the day on
380 which the designated examiners are appointed.

381 (8) The designated examiners shall:

382 (a) conduct their examinations separately;

383 (b) conduct the examinations at the home of the proposed patient, at a hospital or other
384 medical facility, or at any other suitable place that is not likely to have a harmful effect on the
385 proposed patient's health;

386 (c) inform the proposed patient, if not represented by an attorney:

387 (i) that the proposed patient does not have to say anything;

388 (ii) of the nature and reasons for the examination;

389 (iii) that the examination was ordered by the court;

390 (iv) that any information volunteered could form part of the basis for the proposed
391 patient to be ordered to receive assisted outpatient treatment; and

392 (v) that findings resulting from the examination will be made available to the court;

393 and

394 (d) within 24 hours of examining the proposed patient, report to the court, orally or in
395 writing, whether the proposed patient is mentally ill. If the designated examiner reports orally,
396 the designated examiner shall immediately send a written report to the clerk of the court.

397 (9) If a designated examiner is unable to complete an examination on the first attempt
398 because the proposed patient refuses to submit to the examination, the court shall fix a
399 reasonable compensation to be paid to the examiner.

400 (10) If the local mental health authority, its designee, or a medical examiner determines
401 before the court hearing that the conditions justifying the findings leading to an assisted
402 outpatient treatment hearing no longer exist, the local mental health authority, its designee, or
403 the medical examiner shall immediately report that determination to the court.

404 (11) The court may terminate the proceedings and dismiss the application at any time,

including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient is not mentally ill.

(12) Before the hearing, an opportunity to be represented by counsel shall be afforded to the proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.

(13) (a) All persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other individual. The court may allow a waiver of the proposed patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(b) The court is authorized to exclude all individuals not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

(e) (i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order, if any;

(B) admission notes, if any;

(C) the diagnosis, if any;

(D) doctor's orders, if any;

(E) progress notes, if any;

(F) nursing notes, if any; and

436 (G) medication records, if any.

437 (ii) The information described in Subsection (13)(e)(i) shall also be provided to the
438 proposed patient's counsel:

439 (A) at the time of the hearing; and

440 (B) at any time prior to the hearing, upon request.

441 (14) The court shall order a proposed patient to assisted outpatient treatment if, upon
442 completion of the hearing and consideration of the information presented, the court finds by
443 clear and convincing evidence that:

444 (a) the proposed patient has a mental illness;

445 (b) there is no appropriate less-restrictive alternative to a court order for assisted
446 outpatient treatment; and

447 (c) (i) the proposed patient lacks the ability to engage in a rational decision-making
448 process regarding the acceptance of mental health treatment, as demonstrated by evidence of
449 inability to weigh the possible risks of accepting or rejecting treatment; or

450 (ii) the proposed patient needs assisted outpatient treatment in order to prevent relapse
451 or deterioration that is likely to result in the proposed patient posing a substantial danger to self
452 or others.

453 (15) The court may order the applicant or a close relative of the patient to be the
454 patient's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the
455 patient's mental health treatment.

456 (16) In the absence of the findings described in Subsection (14), the court, after the
457 hearing, shall dismiss the proceedings.

458 (17) (a) The assisted outpatient treatment order shall designate the period for which the
459 patient shall be treated, which may not exceed six months without a review hearing.

460 (b) An individual identified under Subsection (4) may request a review hearing at any
461 time while the assisted outpatient treatment order is in effect.

462 (c) At a review hearing, the court may extend the duration of an assisted outpatient
463 treatment order by up to six months, if:

464 (i) the court finds by clear and convincing evidence that the patient meets the
465 conditions described in Subsection (14); or

466 (ii) (A) the patient does not appear at the review hearing; and

(B) notice of the review hearing was provided to the patient's last known address by the applicant described in Subsection (1) or by a local mental health authority.

(d) The court shall maintain a current list of all patients under its order of assisted outpatient treatment.

(e) At least two weeks prior to the expiration of the designated period of any assisted outpatient treatment order still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee.

(18) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

(19) A court may not hold an individual in contempt for failure to comply with an assisted outpatient treatment order.

(20) As provided in Section 31A-22-650, a health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.

Section 7. Section **62A-15-631** is amended to read:

62A-15-631. Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.

(1) A responsible ~~[person]~~ individual who has ~~[reason to know]~~ credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the district court in the county where the proposed patient resides or is found, a written application that includes:

(a) unless the court finds that the information is not reasonably available, the proposed patient's:

(i) name;

(ii) date of birth; and

(iii) social security number; ~~[and]~~

(b) (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based[-]; and

(c) a statement whether the proposed patient has previously been under an assisted outpatient treatment order, if known by the applicant.

(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(b) The consultation described in Subsection (2)(a):

(i) may take place at or before the hearing; and

(ii) is required if the local mental health authority appears at the hearing.

(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a substantial danger to self or others requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination.

(4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient before, or upon, placement in the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.

(5) Notice of commencement of those proceedings shall be provided by the court as

soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the proposed patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.

(6) Proceedings for commitment of an individual under the age of 18 years to a local mental health authority may be commenced in accordance with Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.

(8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention or examination, the court shall appoint two designated examiners:

(a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);

(b) one of whom is a licensed physician; and

(c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.

(9) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.

(10) The designated examiners shall:

(a) conduct their examinations separately;

(b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;

(c) inform the proposed patient, if not represented by an attorney:

(i) that the proposed patient does not have to say anything;

(ii) of the nature and reasons for the examination;

(iii) that the examination was ordered by the court;

(iv) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment; and

(v) that findings resulting from the examination will be made available to the court; and

(d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable programs available to the proposed patient without court proceedings. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.

(11) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.

(12) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, its designee, or the medical examiner shall immediately report that determination to the court.

(13) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient:

(a) is not mentally ill;

(b) has agreed to voluntary commitment, as described in Section 62A-15-625; or

(c) has acceptable options for treatment programs that are available without court proceedings.

(14) Before the hearing, an opportunity to be represented by counsel shall be afforded to ~~every~~ the proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.

(15) (a) The proposed patient, the applicant, and all other persons to whom notice is

required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the proposed patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.

(b) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.

(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

(d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

(e) (i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes; ~~and~~

(G) medication records pertaining to the current commitment~~[-]; and~~

(H) whether the proposed patient has previously been civilly committed or under an order for assisted outpatient treatment.

(ii) That information shall also be supplied to the proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(16) The court shall order commitment of a proposed patient who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (15)(d), the court finds by clear and convincing evidence that:

622 (a) the proposed patient has a mental illness;

623 (b) because of the proposed patient's mental illness the proposed patient poses a
624 substantial danger to self or others;

625 (c) the proposed patient lacks the ability to engage in a rational decision-making
626 process regarding the acceptance of mental treatment as demonstrated by evidence of inability
627 to weigh the possible risks of accepting or rejecting treatment;

628 (d) there is no appropriate less-restrictive alternative to a court order of commitment;
629 and

630 (e) the local mental health authority can provide the proposed patient with treatment
631 that is adequate and appropriate to the proposed patient's conditions and needs. In the absence
632 of the required findings of the court after the hearing, the court shall dismiss the proceedings.

633 (17) (a) The order of commitment shall designate the period for which the patient shall
634 be treated. When the patient is not under an order of commitment at the time of the hearing,
635 that period may not exceed six months without benefit of a review hearing. Upon such a
636 review hearing, to be commenced prior to the expiration of the previous order, an order for
637 commitment may be for an indeterminate period, if the court finds by clear and convincing
638 evidence that the required conditions in Subsection (16) will last for an indeterminate period.

639 (b) The court shall maintain a current list of all patients under its order of commitment.
640 That list shall be reviewed to determine those patients who have been under an order of
641 commitment for the designated period. At least two weeks prior to the expiration of the
642 designated period of any order of commitment still in effect, the court that entered the original
643 order shall inform the appropriate local mental health authority or its designee. The local
644 mental health authority or its designee shall immediately reexamine the reasons upon which the
645 order of commitment was based. If the local mental health authority or its designee determines
646 that the conditions justifying that commitment no longer exist, it shall discharge the patient
647 from involuntary commitment and immediately report the discharge to the court. Otherwise,
648 the court shall immediately appoint two designated examiners and proceed under Subsections
649 (8) through (14).

650 (c) The local mental health authority or its designee responsible for the care of a patient
651 under an order of commitment for an indeterminate period shall, at six-month intervals,
652 reexamine the reasons upon which the order of indeterminate commitment was based. If the

local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).

(18) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.

(19) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 8. Section **62A-15-703** is amended to read:

**62A-15-703. Residential and inpatient settings -- Commitment proceeding --
Child in physical custody of local mental health authority.**

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

- 684 (a) shall be a designated examiner, as defined in Section 62A-15-602; and
685 (b) may not profit, financially or otherwise, from the commitment or physical
686 placement of the child in that setting.
- 687 (4) Upon determination by a fact finder that the following circumstances clearly exist,
688 the fact finder may order that the child be committed to the physical custody of a local mental
689 health authority:
- 690 (a) the child has a mental illness, as defined in [~~Subsection~~] Section 62A-15-602[(13)];
691 (b) the child demonstrates a reasonable fear of the risk of substantial danger to self or
692 others;
693 (c) the child will benefit from care and treatment by the local mental health authority;
694 and
695 (d) there is no appropriate less-restrictive alternative.
- 696 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be
697 conducted in as informal manner as possible and in a physical setting that is not likely to have a
698 harmful effect on the child.
- 699 (b) The child, the child's parent or legal guardian, the petitioner, and a representative of
700 the appropriate local mental health authority:
- 701 (i) shall receive informal notice of the date and time of the proceeding; and
702 (ii) may appear and address the petition for commitment.
- 703 (c) The neutral and detached fact finder may, in the fact finder's discretion, receive the
704 testimony of any other person.
- 705 (d) The fact finder may allow a child to waive the child's right to be present at the
706 commitment proceeding, for good cause shown. If that right is waived, the purpose of the
707 waiver shall be made a matter of record at the proceeding.
- 708 (e) At the time of the commitment proceeding, the appropriate local mental health
709 authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the
710 commitment proceeding, shall provide the neutral and detached fact finder with the following
711 information, as it relates to the period of current admission:
- 712 (i) the petition for commitment;
713 (ii) the admission notes;
714 (iii) the child's diagnosis;

- (iv) physicians' orders;
- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and the child's parent or legal guardian of that decision and of the reasons for ordering commitment.

(iii) The neutral and detached fact finder shall state in writing the basis of the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the

Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition or on petition of the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

- (i) the original petition for commitment;
- (ii) admission notes;
- (iii) diagnosis;
- (iv) physicians' orders;
- (v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a

808 more restrictive environment, if the local authority or its designee and the child's current
809 treating mental health professional has reason to believe that the less restrictive environment in
810 which the child has been placed is exacerbating the child's mental illness, or increasing the risk
811 of harm to self or others.

812 (c) The written order described in Subsection (12)(b) shall include the reasons for
813 placement in a more restrictive environment and shall authorize any peace officer to take the
814 child into physical custody and transport the child to a facility designated by the appropriate
815 local mental health authority in conjunction with the child's current treating mental health
816 professional. Prior to admission to the more restrictive environment, copies of the order shall
817 be personally delivered to the child, the child's parent or legal guardian, the administrator of the
818 more restrictive environment, or the administrator's designee, and the child's former treatment
819 provider or facility.

820 (d) If the child has been in a less restrictive environment for more than 30 days and is
821 aggrieved by the change to a more restrictive environment, the child or the child's
822 representative may request a review within 30 days of the change, by a neutral and detached
823 fact finder as described in Subsection (3). The fact finder shall determine whether:

824 (i) the less restrictive environment in which the child has been placed is exacerbating
825 the child's mental illness or increasing the risk of harm to self or others; or

826 (ii) the less restrictive environment in which the child has been placed is not
827 exacerbating the child's mental illness or increasing the risk of harm to self or others, in which
828 case the fact finder shall designate that the child remain in the less restrictive environment.

829 (e) Nothing in this section prevents a local mental health authority or its designee, in
830 conjunction with the child's current mental health professional, from discharging a child from
831 commitment or from placing a child in an environment that is less restrictive than that
832 designated by the neutral and detached fact finder.

833 (13) Each local mental health authority or its designee, in conjunction with the child's
834 current treating mental health professional shall discharge any child who, in the opinion of that
835 local authority, or its designee, and the child's current treating mental health professional, no
836 longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120.
837 The local authority and the mental health professional shall assure that any further supportive
838 services required to meet the child's needs upon release will be provided.

839 (14) Even though a child has been committed to the physical custody of a local mental
840 health authority under this section, the child is still entitled to additional due process
841 proceedings, in accordance with Section 62A-15-704, before any treatment that may affect a
842 constitutionally protected liberty or privacy interest is administered. Those treatments include,
843 but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.